

II.
JURISDICTION AND VENUE

5. The Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 because ReSea Project asserts a claim under the Lanham Act, 15 U.S.C. § 1125(a).

6. The Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332(a)(1) because the parties are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. The Court has personal jurisdiction over Defendants because they have appeared and have not contested personal jurisdiction.

8. The Court has personal jurisdiction over RIO because RIO is domiciled in the State of Texas and has sufficient minimum contacts with this forum so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. RIO has engaged in repeated online contacts with forum residents over the internet.

9. The Court has personal jurisdiction over Kelly because Kelly has maintained continuous and systematic contacts with Texas by virtue of his involvement in RIO. Kelly also has engaged in repeated online contacts with forum residents over the internet.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because, on information and belief, RIO maintains its principal place of business in this District.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this District.

12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendants.

III. FACTUAL BACKGROUND

A. ReSea Project is working to combat the world’s ocean plastic crisis.

13. ReSea Project is a for-profit company working to combat the ocean plastic crisis. ReSea Project reclaims plastic from oceans and rivers (including in and around Indonesia), sorts it, and puts it into sacks. ReSea Project then tags, weighs, and delivers the sacks to local waste banks that, in turn, distribute the material for further recycling and other waste management. Using blockchain technology, ReSea collects, records, and monitors data at critical control points of the collection process, which provides real-time validation of the quantity of plastic collected and transported. *See* Breck Decl. at ¶¶ 3-4, 7, 9.

14. Customers enter contracts with ReSea Project for the reclamation of a certain amount of plastic from the hydrosphere in exchange for a fee. In partnering with ReSea Project, customers can leverage their plastic-removal commitments to meet their individual sustainability goals and/or support their sustainable brand profiles. *See* Breck Decl. at ¶ 6.

15. For example, one ReSea Project customer, a company operating as “The Hidden Sea,” is an Australian winemaker that markets itself to “socially conscious consumers who love great tasting wine.” Through its engagement with ReSea Project, The Hidden Sea has committed to removing and recycling ten plastic bottles from oceans and rivers for every bottle of wine sold.¹ *See* Breck Decl. at ¶ 6.

¹ *See* The Hidden Sea ‘Story’, *available at* <https://thehiddensea.com/pages/story-new> (last visited Jan. 6, 2022) (“We exist for socially conscious consumers who love great tasting wine, and want to feel a part of something bigger than themselves. We remove and recycle 10 plastic bottles from oceans and rivers for every bottle of wine we sell.”); *see also* The Hidden Sea ‘Allies’, *available at* <https://thehiddensea.com/pages/our-allies> (last visited Jan. 6, 2022) (“Our partnership with ReSea Project is the heart and soul of our ocean cleanup initiative . . .”).

16. ReSea Project distinguishes itself from competing companies, in part, through its tracing system, which is backed by VeChain blockchain technology and certified by DNV, the world-renowned third-party certification body.² Indeed, ReSea Project was just the second organization in the world to be certified under DNV's standard for reclaiming plastic in the hydrosphere.³ *See* Breck Decl. at ¶ 7.

17. In obtaining that certification, ReSea Project (like other companies seeking DNV certification) entered a contract with DNV and paid certain fees for an evaluation, followed by periodic reviews and other associated fees. *See* Breck Decl. at ¶ 8.

18. Among other things, ReSea Project's certification helps give customers assurance that plastic material collected from a given water body is not mixed with other material after the initial bagging, up through delivery to local waste banks. *See* Breck Decl. at ¶ 9.

B. RIO, a ReSea Project competitor, regularly advertises its business and promotes its brand through social media and other internet platforms.

19. RIO is a for-profit competitor of ReSea Project. *See* Breck Decl. at ¶ 10.

20. Like ReSea Project, RIO has operations in and around Indonesia. *See* Breck Decl. at ¶ 10.

21. However, unlike ReSea Project, RIO lacks DNV certification. The services offered by RIO and ReSea Project affect interstate commerce.

² DNV is an international accredited registrar and classification society headquartered in Høvik, Norway which provides certification services for several industries including maritime, oil & gas, renewable energy, electrification, food & beverage and healthcare.

³ *See ReSea Project is the 2nd Organization certified to DNV GL's reclaimed plastic traceability standard*, Press Release, Feb. 22, 2021, available at <https://www.dnv.com/news/resea-project-is-the-2nd-organization-certified-to-dnv-gl-s-reclaimed-plastic-traceability-standard-197214> (last visited Jan. 6, 2022).

22. According to its online promotional materials, RIO—among other things—sells plastic credits, which RIO compares to carbon offset programs.

23. RIO and its founder/CEO, Kelly, use social media (including their Facebook and LinkedIn accounts) and other internet platforms to advertise and promote RIO’s business and its brand, more generally.

24. RIO and Kelly have substantial social media followings. Kelly’s LinkedIn account, for example, has more than 11,000 followers. *See* Kieran Kelly LinkedIn Profile, *available at* <https://www.linkedin.com/in/kieran-kelly-5b6774a/> (last visited Jan. 12, 2022). Similarly, RIO’s Facebook account has more than 8,000 followers. *See* RIO Facebook Account, *available at* <https://www.facebook.com/Oceansintegrity> (last visited Jan. 12, 2022).

25. To expand the reach of their social media content beyond their many followers, RIO and Kelly both use “tagging” functions and hashtags.

26. When social media users, like RIO and Kelly, “tag” individuals and organizations in posts, the persons and organizations that are tagged receive notifications directing them to the content in which they were tagged. Generally speaking, “tagging” also makes the posted content more readily available to those who view the tagged profile.⁴

⁴ *See, e.g.,* Facebook – How Tagging Works, *available at* <https://www.facebook.com/help/267689476916031> (last visited Jan. 10, 2021) (“When you tag someone, you create a link to their profile. This means that: · The post you tag the person in may also be added to that person’s timeline. . . . · When you tag someone, they’ll be notified. · Also, if you or a friend tags someone in your post, the post could be visible to the audience you selected plus friends of the tagged person.”); Facebook – When I tag someone in a post or photo, who can see it?, *available at* <https://www.facebook.com/help/240051956039320> (last visited Jan. 10, 2021) (“When you tag someone, that photo or post may be shared with both the person tagged and their friends. This means that if you haven’t already included their friends in the audience, their friends may now be able to see it. For example, if you tag Jane in a photo shared with your friends, the audience expands to Friends (+) to now include your friends and Jane’s.”); LinkedIn – Mention

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27. Similarly, social media users can amplify their messages by using hashtags, which helps categorize content and make it more readily available to those searching similar subject matter.⁵

28. Accordingly, social media users, like RIO and Kelly, can promote their content to the public and target groups, like potential customers, by using hashtags and “tagging” functionality.

29. In one example shown below, RIO posted a promotional video on its Facebook account in August 2021, tagging numerous organizations and using many hashtags. The video was accompanied by the following message advertising RIO’s services: “For your plastic offsets Contact RIO.”

People in Your Posts, *available at*
<https://www.linkedin.com/help/linkedin/answer/a525082/mention-people-in-your-posts?lang=en>
 (last visited Jan. 10, 2021) (“Mentioning a connection or other members encourages engagement with your posts and comments. Connections or other members mentioned get notified about the post or comment. A post or comment is associated with a connection’s or other member’s profile. Viewers can click on a connection or other member’s name to navigate to their profiles.”).

⁵ See, e.g., Facebook – How do I use hashtags on Facebook?, *available at* <https://www.facebook.com/help/587836257914341> (last visited Jan. 10, 2022) (“Hashtags turn topics and phrases into clickable links in your posts on your personal timeline, Page or groups. This helps people find posts about topics they’re interested in. To make a hashtag, write # (the number sign) along with a topic or phrase and add it to your post. For example: I just saw the cutest puppy! #dogs. When you click a hashtag, you’ll see a feed of posts that include that hashtag. You may also see some related hashtags at the top of the page.”); Joe Gannon, The Only Article You Need To Read About LinkedIn Hashtags, dated Apr. 20, 2020, *available at* <https://www.linkedin.com/pulse/only-article-you-need-read-linkedin-hashtags-joe-gannon/> (last visited Jan. 10, 2022) (“Hashtags are used across social media plat-forms to categorise content, so we can search and find content that we are interested in and so businesses and brands can reach larger audiences of people who may be interested in their con-tent.”).



RIO Ocean Integrity

August 6, 2021 · 🌐

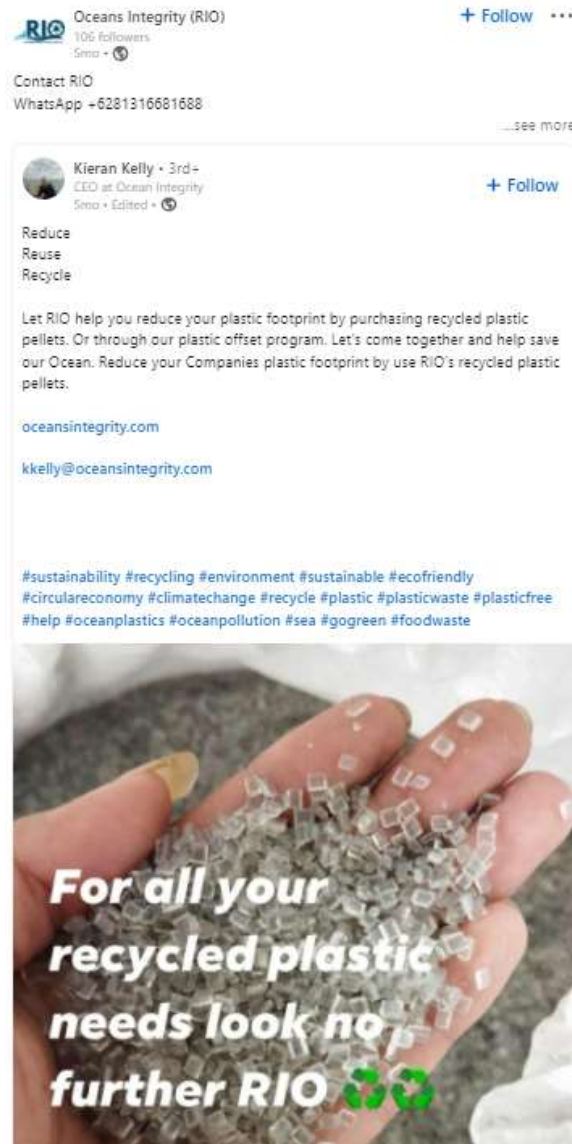
...

For your plastic offsets Contact RIO. Join our Team and help save our Ocean #india #africa #indonesia #pennsylvania #unitedstates #oceanplastic #sea #plasticwaste #Jakarta Post U.S. Embassy - Jakarta, Indonesia Logistics Plus Inc. Rico Guerrero Jesse Field Nuri Revani Erie Zoo Erie News Now Erie Insurance Erie County Democratic Committee Erie County Republican Committee Embassy of the United Arab Emirates, India USAID - US Agency for International Development USAID Indonesia USAID Asia



See RIO Facebook Post, *available at* <https://fb.watch/au6Ln43FyB/> (last visited Jan. 12, 2022).

30. Similarly, Kelly posted promotional material for RIO on his LinkedIn account in or around August 2021 (which RIO, in turn, reposted on its account with a phone number to call), using numerous hashtags and stating: “Let RIO help you reduce your plastic footprint by purchasing recycled plastic pellets. Or through our plastic offset program.”



See RIO LinkedIn Post, available at https://www.linkedin.com/posts/rio-brand_sustainability-

recycling-environment-activity-6833422996393332736-5AK4 (last visited Jan. 12, 2022).

C. RIO claimed it recovered bags of ReSea Project plastic, but RIO refused to share any of those bags with ReSea Project or disclose the coordinates of where RIO supposedly recovered the bags.

31. On or around September 11, 2021, Kelly e-mailed ReSea Project, alleging that RIO had collected from the ocean “hundreds of tons” of bagged plastic material that “belong[s] to ReSea.” Kelly added that, “for some strange reason,” oil, rope, and nets were “added to the bags of plastic”—apparently implying that ReSea Project had added material to the bags to increase their weight and, in turn, overcharge its customers. *See* E-mail from Kieran Kelly (RIO) to Info@reseaproject.com, dated Sept. 11, 2021, attached as **Exhibits A-1**. Kelly also sent photographs of three bags of reclaimed plastic with ReSea Project tags and identification numbers. *See Exhibit A-2*.

32. ReSea Project promptly responded and, on or around September 13, 2021, Kelly agreed that RIO would provide ReSea Project access to its warehouse so that ReSea Project could retrieve the bags for inspection, and that RIO would provide the coordinates of the location where RIO purportedly recovered the bags so ReSea Project could investigate. *See* E-mail from Ann Sofie Gade (ReSea Project) to Kieran Kelly (RIO), dated Sept. 13, 2021, attached as **Exhibit A-3**.

33. ReSea Project repeatedly followed up over several days, stating in one e-mail, for example: “We want to get to the bottom of this matter as soon as possible so that we can take action. . . . May we arrange for pick up tomorrow or alternatively one of the coming days?” *See* E-mail from Ann Sofie Gade (ReSea Project) to Kieran Kelly (RIO), dated Sept. 14, 2021, attached as **Exhibit A-3**.

34. Ultimately, Defendants never made the bags of reclaimed plastic available to ReSea Project and Defendants never provided the coordinates of any alleged dumpsites. *See* Breck Decl. at ¶ 12.

D. ReSea Project investigated and found that, contrary to Defendants’ accusations, RIO purchased bags of reclaimed plastic from a recycling facility that acquired the material from one of ReSea Project’s waste bank partners.

35. Meanwhile, upon receiving Kelly’s September 11 e-mail, ReSea Project began investigating Defendants’ accusations. *See* Breck Decl. at ¶ 13.

36. Using the identification numbers on the bag tags from Kelly’s photos, ReSea Project traced the bags from Kelly’s photos to the Bahasa Utama waste bank, which is one of the waste banks that ReSea Project uses as part of its DNV-certified tracing system. *See* Breck Decl. at ¶ 13.

37. Later, in response to Defendants’ allegations, DNV reviewed the data from ReSea Project’s tracing system and conducted a semi-announced audit of ReSea Project’s operations—which (i) confirmed that ReSea Project’s tracing system remained in compliance with DNV’s standards, (ii) determined that the three ReSea Project-tagged bags from Kelly’s photos had been properly delivered to the Bahasa Utama waste bank, and (iii) revealed no evidence that ReSea Project dumped reclaimed plastic back into the hydrosphere or added non-plastic material to bags of reclaimed plastic to increase the weight of the bags. *See* Breck Decl. at ¶ 14.

38. In other words, thanks to its DNV-certified tracing system, ReSea Project was able to refute Defendants’ allegations.

39. ReSea Project also learned that the Bahasa Utama waste bank sold bags of plastic reclaimed by ReSea Project to a waste management company called PT Daur, as confirmed by PT Daur’s Chief Executive Officer, Febri Heryanto. PT Daur, in turn, sold thousands of bags of plastic reclaimed by ReSea Project to RIO. *See* Breck Decl. at ¶¶ 16-17; E-mail from Febri Heryanto (PT Daur) to Ann Sofie Gade (ReSea Project), dated Sept. 21, 2021, attached as **Exhibit A-5**.

40. Those transactions are documented in financial records that ReSea Project obtained from PT Daur. *See* Account Portfolio – Transaction Inquiry (partially redacted), attached as

Exhibit A-6.

41. In short, contrary to Defendants’ claims that that they had recovered from the hydrosphere “hundreds of tons” plastic illegally dumped by ReSea Project, RIO—remarkably—had purchased thousands of bags ReSea Project-reclaimed plastic from a waste management facility.

42. ReSea Project confronted RIO with the findings of its investigation, which (among other things) suggested that RIO misrepresented how it acquired the ReSea Project bags of reclaimed plastic in its possession, and showed that RIO and Kelly’s allegations of impropriety against ReSea Project were false and misleading. *See* E-mail from Søren Marcussen (ReSea Project) to Kieran Kelly, dated Sept. 21, 2021, 6:32 AM, attached as **Exhibit A-7** (“You claim that our plastic waste has been found on dump sites, in the river and on the bank of the river. This is a very serious allegation. Our investigation shows no evidence of this. Instead, we have learned, that your company has actually purchased our plastic waste through PT DAUR; thousands of bags. Plastic that we have collected in rivers and in the ocean. We have documentation of bank transactions from your company to prove this as well as pictures/videos to support this. Based on the pictures you have provided, we can see some of the tags on the bags, that confirm who collected the plastic waste, where it was handed in for weighing and then sold onto you through PT DAUR.”).

43. ReSea Project invited RIO to provide controverting evidence and reiterated its request for access to the bags and the location of the alleged dumpsites. *See, e.g.*, E-mail from Søren Marcussen (ReSea Project) to Kieran Kelly (RIO), dated Sept. 21, 2021, 6:32 AM, attached as **Exhibit A-8**.

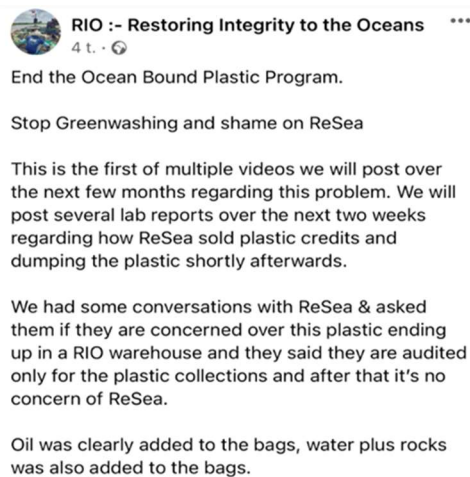
44. Notwithstanding ReSea Project’s evidence to the contrary, RIO’s chief operating

officer, Keith Flitner, denied that RIO ever purchased *any* bags of reclaimed plastic. *See* E-mail from Keith Flitner (RIO) to Søren Marcussen (ReSea Project), dated Sept. 21, 2021, 21:51, attached as **Exhibit A-7**.

E. RIO launched a smear campaign against ReSea Project based on its false accusations.

45. In or around late September 2021, Defendants began making their false accusations public, in many instances using the same social media accounts that RIO and Kelly use to advertise RIO's business and promote RIO's brand.

46. For example, as reflected below, RIO accused ReSea Project of dumping bags of reclaimed plastic into the ocean, adding oil and rocks to the bags, and (more generally) of "greenwashing."⁶



See RIO Social Media Post, attached as **Exhibit A-9**.

47. On October 2, 2021, ReSea Project, through counsel, sent a cease-and-desist letter

⁶ "Greenwashing" refers to the process by which some companies and organizations mislead their consumers or audiences by making them believe that a product, service they provide, or that the organization itself is environmentally friendly or sustainable, when it is not. *See, e.g.,* <https://www.globalcitizen.org/en/content/greenwashing-what-is-it-and-how-to-avoid->


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demanding that RIO and Kelly correct their past false statements, refrain from making any additional false statements, and preserve all relevant evidence. *See* Letter from Marc Katz (counsel for ReSea Project) to Kieran Kelly (RIO) (Oct. 2, 2021), attached as **Exhibit B**.

48. Undeterred, RIO and Kelly continued making false allegations against ReSea Project.

49. On or around October 7, 2021, RIO posted a message on its Facebook account reiterating its prior false allegations. RIO, facing potential litigation, claimed that ReSea Project “is now being investigated into [sic] the Ocean Plastic scam they are involved in.” The Facebook post, in an apparent reference to ReSea Project’s cease-and-desist letter, stated: “[W]e will take them on and take them down. . . . We have absolutely no intention of backing down from this environmental company and we will continue to help with the investigation into them.” On information and belief, RIO’s allegation that ReSea Project was being “investigated” was untrue.

it/#:~:text=What%20is%20the%20Definition%20of,sustainable%2C%20when%20it%20is%20not.

 RIO Ocean Integrity
October 7, 2021 · 🌐

A few weeks ago we posted a story on LinkedIn calling out a so called environmental company called the ReSea Project.

This company was collecting plastic in North Jakarta and they claimed they were supporting local fishermen in Indonesia by doing so.

ReSea is actually owned by a massive packaging, pharmaceutical, clothing company in Denmark called Tech Pack.

This company was engaged in massive corporate fraud and is now being investigated into the Ocean Plastic scam they are involved in.

I received multiple treats of legal action as we exposed them. The last thing RIO needs is a legal problem with a multi billion dollar company. But we will take them on and take them down.

They added fishing nets plus rope to bags of plastic to make the collected plastic look like it came from Indigenous Fishermen. This I couldn't let go and then the gloves came off.

I find it absolutely disgusting that a massive European company would do such a thing and try make these amazing people look bad.

ReSea also sold plastic credits by fraudulently increasing the weights of this plastic by adding oil and water. The blockchain crypto company VeChain was used for creating these tokens and I believe VeChain is still working with them.

We have absolutely no intention of backing down from this environmental company and we will continue to help with the investigation into them.

We support the Fishing communities globally and everyone involved in ocean cleanup work globally.

The Corporate greenwashing by this European multinational company has to stop. We are thankful for the support from many environmental organisations and companies involved in the plastic industry.

Remember we have only one Ocean and we must ❤️ it.

The only people that can truly clean our Ocean on a industrial scale is the very people that work on it to make a living on a daily basis.

This Multinational company is really not interested in a clean Ocean it is only interested in massive Corporate profits.

We will clear the name of the Indonesian Indigenous Fishermen that ReSea tried to tarnish. We have the Fisherman's backs and we will always support them.

We will have a live internet feed of more of these bags belonging to ReSea opened next week and we will again have independent auditors taking part in this.

The first reports coming back from such companies backs the claims that RIO has made against ReSea.

If you operate in Indonesia please show respect to the people of this wonderful country.

Shame on ReSea and it's parent company for doing the opposite.

[#stopgreenwashing](#) [#reseaproject](#)

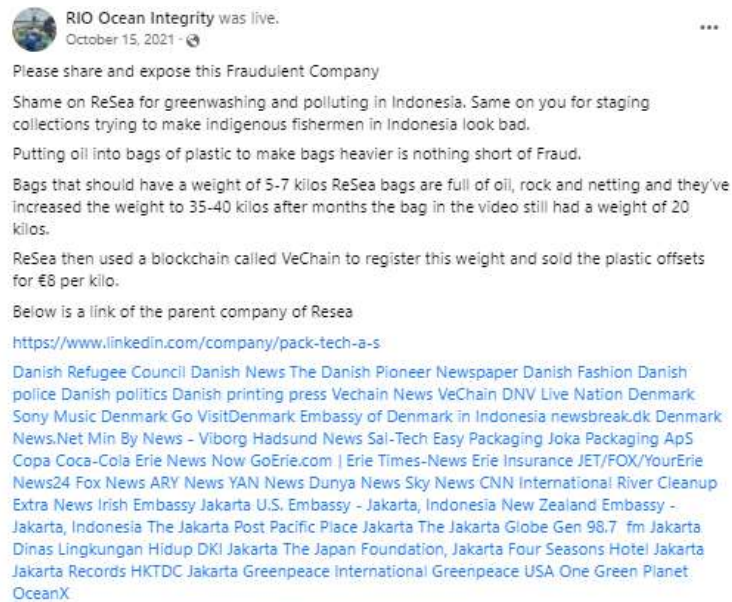
Kieran Kelly
CEO RIO



See RIO Facebook Post, *available at* <https://www.facebook.com/Oceansintegrity> (last visited Jan. 12, 2022), attached as **Exhibit A-11**.

50. For instance, on or around October 15, 2021, RIO posted on its Facebook page (shown below) a message and a video calling ReSea Project a “Fraudulent Company,” accusing it of intentionally adding non-plastic material to increase the weight of its bags of reclaimed plastic

and charging its customers for the weight of the non-plastic material. For publicity, RIO tagged numerous organizations and media outlets, including GoErie.com/Erie News Now/Erie Times-News, Erie Insurance, JET/FOX/YourErie, Fox News, CNN International, Sky News, Greenpeace USA, and One Green Planet, among others.



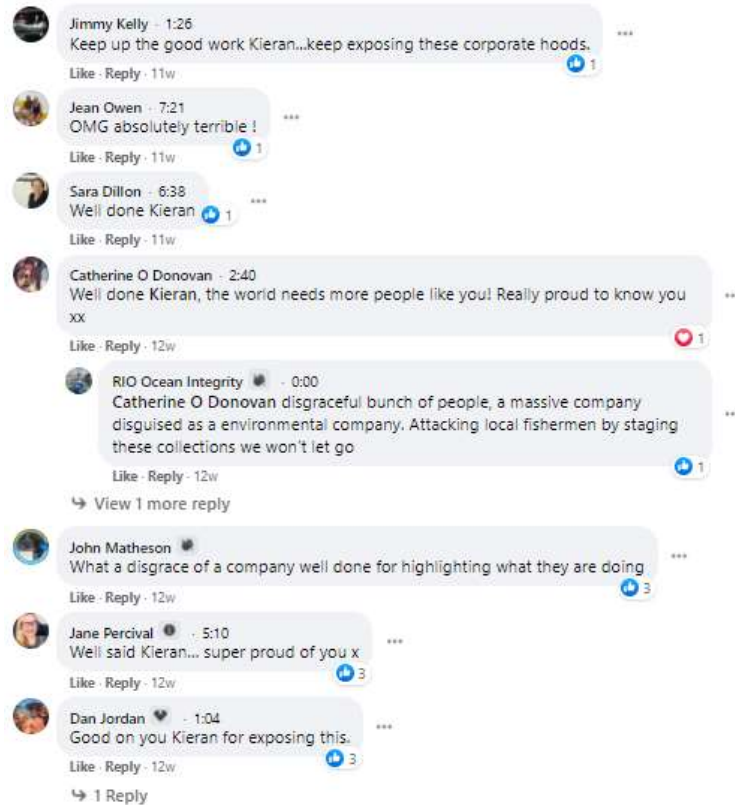
See RIO Facebook Post, *available at* <https://www.facebook.com/Oceansintegrity> (last visited Jan. 12, 2022), attached as **Exhibit A-12**.

51. RIO also posted a comment to that video, calling ReSea Project a “disgraceful bunch of people.” *Id.*

52. The harmful effect of these false allegations is evident from other comments to that

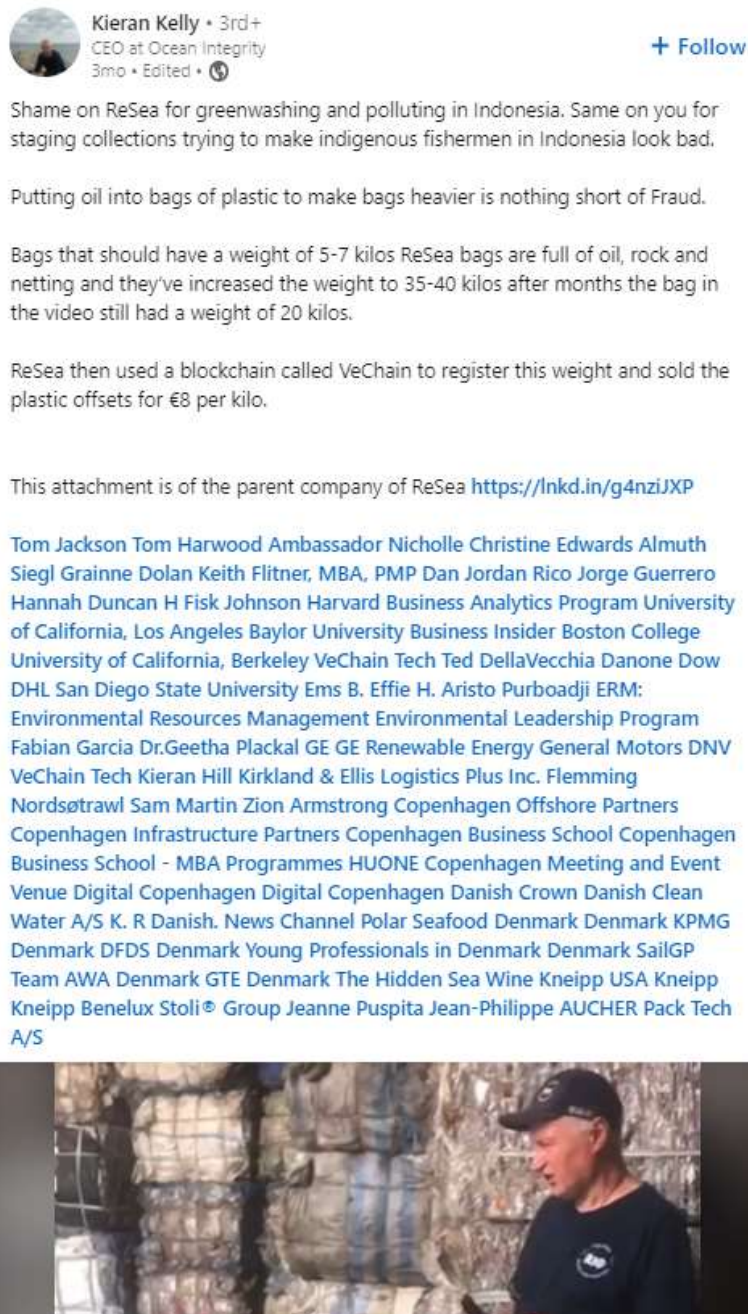
video, which show apparent third parties stating, among other things, “OMG absolutely terrible !” and “What a disgrace of a company well done for highlighting what they are doing”.

53. A portion of that comment section is shown below.



Id.

54. Kelly posted another message and video on his LinkedIn page, accusing ReSea Project of “polluting” and committing “Fraud.” Kelly tagged numerous organizations in the post, including The Hidden Sea (a ReSea Project customer), VeChain (ReSea Project’s blockchain provider), and DNV (the international accreditation firm that certified ReSea Project’s traceability system), along with many large companies that may be in the market for plastic reclamation services.



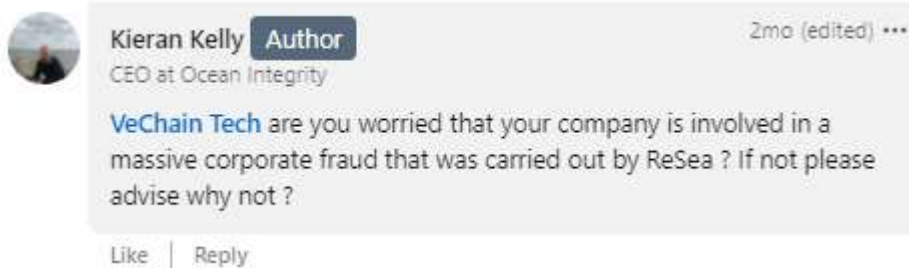
See Kieran Kelly LinkedIn Post, available at https://www.linkedin.com/posts/kieran-kelly-5b6774a_shame-on-resea-for-greenwashing-and-polluting-activity-6855259503261163520-nvK3 (last visited Jan. 12, 2022), attached as **Exhibit A-13**. That video has over 2,500 views.

55. In the comment section to that post, Kelly continued attacking ReSea Project repeatedly, targeting its relationships with The Hidden Sea, VeChain, and DNV.

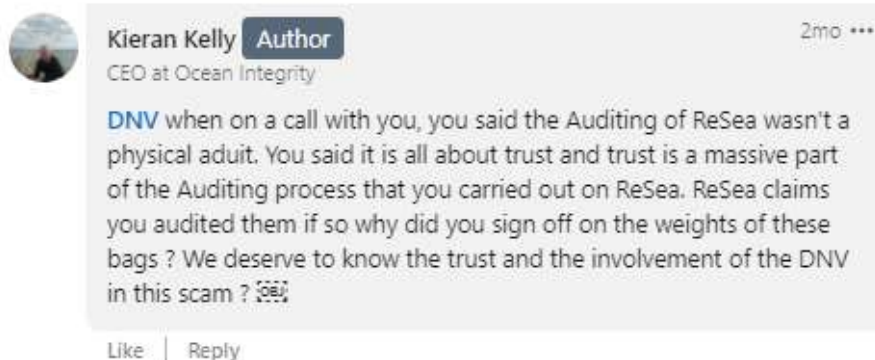
56. Tagging The Hidden Sea, Kelly posted: “[D]o you really support this fraudulent company?” *Id.*



57. Tagging VeChain, Kelly posted: “[A]re you worried that your company is involved in a massive corporate fraud that was carried out by ReSea ? If not please advise why not ?” *Id.*



58. Tagging DNV, Kelly posted: “ReSea claims you audited them if so why did you sign off on the weights of these bags ? We deserve to know the trust and involvement of the DNV in this scam ?” *Id.*



59. Again, the harm caused by Defendants’ promotion of false allegations against ReSea Project is evident from the third party comments to that post, with one—for example—

stating: “This is not greenwashing – this is well beyond that. This is (as you say) pure fraud, and it’s horrifying to think that this is happening on a grand scale” Responding to that commentor, Kelly continued making false allegations against ReSea Project (e.g., “the entire program is a scam”) and targeting ReSea Project’s relationships with DNV and VeChain. *Id.*



Kate Bennett • 3rd+

2mo (edited) ***

Sustainability & Impact Strategist | ESG & Sustainable Finance Advisor | ...

This is horrifying. Thank you for calling it out [Kieran Kelly](#). This is not greenwashing - this is well beyond that. This is (as you say) pure fraud, and it's horrifying to think that this is happening on a grand scale and creating even more challenges for developing countries to address. I wish you all the best in fighting this and bringing those responsible to justice.

Does make you wonder how blockchain data is verified and assured on entry - sounds like there are zero checks and balances to ensure the integrity of data behind these tokens. [Jason Potts](#) - very keen to get your insights on this one. Does the blockchain not require some form of data integrity/assurance check on entry? No point in entries being immutable if they are completely bogus. 🙄

Like · 4 | Reply · 1 Reply



Kieran Kelly Author

2mo ***

CEO at Ocean Integrity

Yes it's crazy almost eight million euros worth of Tokens and the entire program is a scam. We will publish the reports from the independent auditing company and the government auditing company over the next few weeks. It's sad to see VeChain not coming out and distancing themselves from this fraud. ReSea is owned by a massive packaging company and only took part in this program to Greenwash. Greed kicked in I guess as the tokens were issued. The DNV auditing company was meant to audit ReSea, but they claimed that after building up trust with companies this was a major part of the auditing they carried out. The DNV are equally to blame to allow this to happen.

Like | Reply

F. ReSea Project informed RIO and Kelly of its intent to file a lawsuit; in response, they demanded that ReSea Project pay RIO hundreds of thousands of dollars and, once ReSea Project refused, they escalated their false attacks on ReSea Project.

60. On October 19, 2021, amidst this onslaught of false allegations, ReSea Project informed Defendants of its intention to file a lawsuit against them. *See* Letter from Søren Marcussen to Kieran Kelly, Oct. 19, 2021, attached as **Exhibit C**.

61. RIO stated that it wanted to avoid a drawn-out ordeal with ReSea Project and then demanded that ReSea Project pay it hundreds of thousands of dollars.

62. ReSea Project refused and filed this lawsuit on November 15, 2021, asserting claims for defamation and tortious interference, and requesting injunctive relief in a verified complaint. *See* ECF No. 1.

63. In the wake of that filing, Kelly told a San Antonio newspaper “[w]e are not in a million years going to retract anything” that Defendants said about ReSea Project.⁷

64. On December 27, 2021, RIO and Kelly appeared and filed a partial motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, challenging the pleading sufficiency of ReSea Project’s tortious interference claim but not the defamation claim. *See* ECF No. 10.

65. Approximately nine days later, Kelly e-mailed ReSea Project’s customer, The Hidden Sea, reiterating false allegations of fraudulent conduct by ReSea Project: “Would it be possible to speak to someone within your company regarding the partnership you have with ReSea. [sic] I’m sure you don’t realise this so called collections [sic] are staged, in several ways.” *See* E-

⁷ *See* Patrick Danner, *For-profit San Antonio environmental company sued for defamation by Denmark rival over plastic cleanup*, SAN ANTONIO EXPRESS NEWS, Nov. 26, 2021, available at <https://www.expressnews.com/business/local/article/For-profit-San-Antonio-environmental-company-sued-16654189.php> (last visited Jan. 14, 2022).

mail from K. Kelly to The Hidden Sea, dated Jan. 5, 2022, attached as **Exhibit D**.

66. On information and belief, Defendants have made similar outreach to other ReSea Project customers and, on information and belief, they have done so with the intention of harming ReSea Project's customer relationships and promoting RIO's competing business.

67. And, notwithstanding the filing of this lawsuit, RIO and Kelly's false attacks on social media persist.

68. On or around January 9, 2022, RIO posted on its Facebook account a lengthy message, along with a video. *See* RIO Facebook Post, *available at* <https://fb.watch/ar4DFKtZ2v/>, attached as **Exhibit A-14**.

69. That post reiterates many of the prior false allegations made by RIO and Kelly.

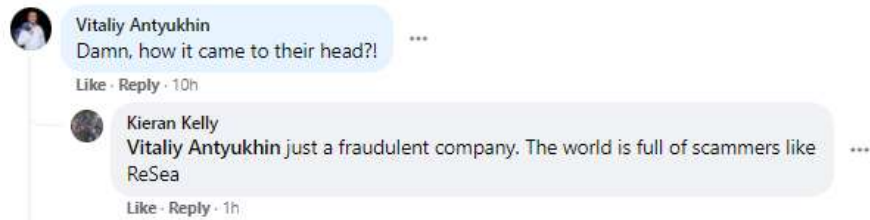
70. This time, however, RIO also states that it has "made several police reports" against ReSea Project, that it will "continue to push the authorities to prosecute" ReSea Project, that ReSea Project is "ripping off" dozens of companies, and that RIO has "no choice [but] to continue to post" content on social media disparaging content about ReSea Project. *Id.*

71. RIO also mentioned and/or tagged numerous organizations in that Facebook post and in the comment section, including several ReSea Project customers (e.g., The Hidden Sea), media outlets, and law enforcement agencies (e.g., Interpol). *Id.*

72. The video accompanying that post shows Kelly using a knife to cut open what he claims is a ReSea Project bag of reclaimed plastic, moving the contents around to show a dark liquid that Kelly claims is oil, and accusing ReSea Project of intentionally putting oil in the bag to "generate weight." A screenshot of that video is shown below. *Id.*



73. Kelly responded to a commentor: “The world is full of scammers” *Id.*



IV.
CAUSES OF ACTION

A. Count I – Defamation (against RIO and Kelly)

74. Paragraphs 1-73 are incorporated by reference as though they are stated in full here.

75. RIO and Kelly made false statements of fact about ReSea Project to third parties.

76. Those statements include false allegations of illegality and fraud by ReSea Project.

77. False statements made by RIO and Kelly about ReSea Project rise to the level of defamation *per se*.

78. RIO and Kelly made false statements of fact about ReSea Project with actual malice, purposefully, intentionally, knowingly, or—at a minimum—negligently.

79. False statements of fact made by RIO and Kelly have caused ReSea Project harm and damages, including but not limited to reputational harm.

B. Count II – Tortious Interference (against RIO and Kelly)

80. Paragraphs 1-73 are incorporated by reference as though they are stated in full here.

81. ReSea Project has a contract with DNV.

82. RIO and Kelly, at all relevant times, have had actual knowledge of ReSea Project's relationship with DNV.

83. RIO and Kelly have acted willfully and intentionally to interfere with ReSea Project's contract with DNV.

84. ReSea Project has contracts with numerous customers, including but not limited to The Hidden Sea.

85. RIO and Kelly, at all relevant times, have had actual knowledge of contracts between ReSea Project and its customers, including but not limited to The Hidden Sea.

86. RIO and Kelly's willful and intentional conduct has caused ReSea Project harm,

damages, and other loss.

C. Count III – Lanham Act, 15 U.S.C. § 1125(a) (against RIO and Kelly)

87. Paragraphs 1-73 are incorporated by reference as though they are stated in full here.

88. RIO is a ReSea Project competitor.

89. RIO and Kelly use their respective social media accounts to advertise RIO's business and promote RIO's brand.

90. Using, among other things, social media accounts that Defendants maintain for purposes of advertising and promoting RIO, Defendants have made false and misleading representations of fact about ReSea Project's services and business to the public, as well as the potential customer base shared by RIO and ReSea Project.

91. RIO and Kelly have used (and continue to use) their social media accounts in these ways in hopes of causing existing and potential ReSea Project customers to choose RIO over ReSea Project, and otherwise to harm ReSea Project's standing in the market and in the eyes of the public.

92. RIO and Kelly took steps (e.g., using hashtags, "tagging" individuals and organizations) to maximize the impact of their false and misleading statements about ReSea Project and to ensure wide dissemination among RIO and ReSea Project's shared potential customer base.

93. Among other things, RIO and Kelly tagged numerous individuals and organizations (particularly those with potential to affect customer decision making) in social media posts containing false and misleading statements about ReSea Project and its services. Those individuals and organizations include, among others, existing ReSea Project customers (e.g., The Hidden Sea), companies potentially seeking ocean plastic reclamation services (e.g., Dow, Danone, DHL, General Electric, General Motors, etc.), environmental and sustainability professionals,

environmental nonprofits (e.g., Greenpeace USA, One Green Planet, etc.), media outlets (e.g., CNN International, Fox News, Sky News, etc.), and law enforcement agencies.

94. ReSea Project has been injured and likely will continue to endure future injury as a result of RIO and Kelly's false and misleading statements about ReSea Project and its services.

**V.
JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, ReSea Project hereby requests trial by jury in this matter.

**VI.
REQUEST FOR RELIEF**

WHEREFORE, ReSea Project respectfully prays that this Court enter judgment in ReSea Project's favor and against Defendants on all counts, and that the Court award ReSea Project all damages (including exemplary/punitive damages), pre- and post-judgment interest, attorneys' fees and costs, other relief to which it may be justly entitled in law or equity, and temporary and permanent injunctive relief, including but not limited to:

- a) the entry of a temporary restraining order and preliminary injunction that:
 - enjoins RIO (including its officers, agents, employees, and all other persons acting on its behalf or in conjunction with it) and Kelly from making any false or misleading statements regarding or relating to ReSea Project, its services, or its affiliates, including but not limited to statements that: (i) ReSea Project or its local partners have dumped and/or are dumping waste or reclaimed plastic into the hydrosphere; (ii) ReSea Project or its local partners have added or adding non-plastic material (e.g., ropes, nets, rocks, oil, etc.) to its collections of reclaimed plastic; and (iii) ReSea Project is committing fraud against its customers or otherwise is engaging in deceptive practices (e.g., "greenwashing"); and
 - compels RIO and Kelly to take down (while taking all steps necessary to preserve all content, data, etc.) and correct their previous false and misleading statements regarding or relating to ReSea Project, its services, or its affiliates, including but not limited to their statements that: (i) ReSea Project or its local

partners have dumped and/or are dumping waste or reclaimed plastic into the hydrosphere; (ii) ReSea Project or its local partners have added or adding non-plastic material (e.g., ropes, nets, rocks, oil, etc.) to its collections of reclaimed plastic; and (iii) ReSea Project is committing fraud against its customers or otherwise is engaging in deceptive practices (e.g., “greenwashing”).

b) the entry of a permanent injunction that:

- enjoins RIO (including its officers, agents, employees, and all other persons acting on its behalf or in conjunction with it) and Kelly from making any false or misleading statements regarding or relating to ReSea Project, its services, or its affiliates, including but not limited to statements that: (i) ReSea Project or its local partners have dumped and/or are dumping waste or reclaimed plastic into the hydrosphere; (ii) ReSea Project or its local partners have added or adding non-plastic material (e.g., ropes, nets, rocks, oil, etc.) to its collections of reclaimed plastic; and (iii) ReSea Project is committing fraud against its customers or otherwise is engaging in deceptive practices (e.g., “greenwashing”); and
- compels RIO and Kelly to take down and correct their previous false and misleading statements regarding or relating to ReSea Project, its services, or its affiliates, including but not limited to their statements that: (i) ReSea Project or its local partners have dumped and/or are dumping waste or reclaimed plastic into the hydrosphere; (ii) ReSea Project or its local partners have added or adding non-plastic material (e.g., ropes, nets, rocks, oil, etc.) to its collections of reclaimed plastic; and (iii) ReSea Project is committing fraud against its customers or otherwise is engaging in deceptive practices (e.g., “greenwashing”).

Dated: January 14, 2022

Respectfully submitted,

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Counsel for Plaintiff ReSea Project ApS

CERTIFICATE OF SERVICE

I hereby certify that, on January 14, 2022, a true and correct copy of the foregoing document has been served upon all counsel of record.

/s/ Christopher B. Donovan
Christopher B. Donovan